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Arthur E. Wilmarth Jr.

George Washington University Law School, awilmarth@law.gwu.edu

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NARROW BANKING AS A STRUCTURAL REMEDY FOR THE PROBLEM OF SYSTEMIC RISK: A COMMENT ON PROFESSOR SCHWARCZ'S *RING-FENCING*

ARTHUR E. WILMARTH, JR.*

In *Ring-Fencing*,¹ Professor Steven Schwarcz provides an insightful overview of the concept of “ring-fencing” as a “potential regulatory solution to problems in banking, finance, public utilities, and insurance.”² As Professor Schwarcz explains, “ring-fencing can best be understood as legally deconstructing a firm in order to more optimally reallocate and reduce risk.”³ Ring-fencing has gained particular prominence in recent years as a strategy for limiting the systemic risk of large financial conglomerates (also referred to herein as “universal banks”). Professor Schwarcz describes several ring-fencing plans that have been adopted or proposed in the United States, United Kingdom, and European Union.⁴

This Comment argues that “narrow banking” is a highly promising ring-fencing remedy for the problems created by universal banks. Narrow banking would strictly separate the deposit-taking function of universal banks from their capital markets activities. If properly implemented, narrow banking could significantly reduce the safety net subsidies currently

* Professor of Law, George Washington University Law School. I am grateful to Peter Conti-Brown for helpful comments on a preliminary draft of this Comment. This Comment includes developments through June 30, 2014.

1. Steven L. Schwarcz, *Ring-Fencing*, 87 S. CAL. L. REV. 69 (2013).
2. *Id.* at 70.
3. *Id.* at 71.
4. *Id.* at 78–81, 98–105 (summarizing the regulatory approaches of the Vickers Report, the Glass-Steagall Act, and the Volcker Rule).

exploited by large financial conglomerates and thereby diminish their incentives for excessive risk-taking.

1. THE DEMISE OF GLASS-STEAGALL AND THE RE-EMERGENCE OF UNIVERSAL BANKS AS SOURCES OF SYSTEMIC RISK

Professor Schwarcz points out that Congress adopted a particularly stringent form of ring-fencing in the Banking Act of 1933, popularly known as the Glass-Steagall Act (“Glass-Steagall”), which responded to the collapse of the U.S. banking system during the Great Depression.⁵ In addition to creating a new federal scheme for insuring bank deposits, Glass-Steagall went beyond conventional notions of ring-fencing by requiring banks to divest all of their securities affiliates.⁶ Congress determined that (1) federal deposit insurance was urgently needed to prevent contagious runs by bank depositors, and (2) an absolute separation between commercial and investment banking was required to prevent banks from engaging in speculative capital markets activities similar to those that triggered an unsustainable boom during the 1920s and inflicted heavy losses on major banks during the early 1930s.⁷

As Professor Schwarcz observes, deposit insurance and Glass-Steagall’s separation of commercial and investment banking had the virtue of “safeguarding deposits and reducing the risks of bank runs.”⁸ In addition, Professor Luigi Zingales has pointed out that Glass-Steagall “deprived investment banks of access to cheap funds (in the form of deposits), forcing them to limit their size and the size of their bets.”⁹ The barriers erected by Glass-Steagall also made U.S. financial markets “more resilient” by reducing the risks of contagion between banks and securities firms.¹⁰ With Glass-Steagall in place, the United States did not experience

5. *Id.* at 79–80, 98–101.

6. *Id.* at 98 (explaining that Glass-Steagall “legally deconstructed banks by separating their deposit-taking activities from their riskier investment banking activities”). I am indebted to Peter Conti-Brown for suggesting that Glass-Steagall’s divestiture mandate was a remedy that was more far-reaching than most current understandings of “ring-fencing.”

7. Arthur E. Wilmarth, Jr., *The Dark Side of Universal Banking: Financial Conglomerates and the Origins of the Subprime Financial Crisis*, 41 CONN. L. REV. 963, 974 (2009) [hereinafter Wilmarth, *Dark Side*]; Arthur E. Wilmarth, Jr., *Did Universal Banks Play a Significant Role in the U.S. Economy’s Boom-and-Bust Cycle of 1921–33? A Preliminary Assessment*, in 4 CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW 559, 564–85 (Int’l Monetary Fund ed., 2005) available at <http://ssrn.com/abstract=838267> [hereinafter Wilmarth, *Universal Banks and the 1920s*].

8. Schwarcz, *supra* note 1, at 99.

9. Luigi Zingales, *Why I Was Won over by Glass-Steagall*, FIN. TIMES (June 10, 2012), www.ft.com/cms/s/0/cb3e52be-b08d-11e1-8b36-00144feabdc0.html#axzz3GLJiz6KK.

10. *Id.* (pointing out that “commercial banks were untouched by plummeting equity prices”

any systemic banking crises from the mid-1930s to the late 1970s.¹¹

Glass-Steagall's barriers came under increasing pressure after 1980, as large banks pushed to expand into securities and insurance activities in response to competition from bank-like products offered by securities firms and insurance companies.¹² Federal regulators and courts issued a series of decisions that opened numerous loopholes in Glass-Steagall between 1987 and 1998, and Congress finally repealed Glass-Steagall's key provisions in 1999.¹³ At that point, banks were free to affiliate with securities firms and insurance companies by forming financial holding companies, which offered a full array of financial services to retail and commercial customers.¹⁴

In response to the demise of Glass-Steagall and similar legal developments in the United Kingdom and the European Union, large universal banks quickly captured leading shares in financial markets on both sides of the Atlantic.¹⁵ The market leadership achieved by universal banks during the 2000s rivaled the dominant positions their predecessors occupied during the 1920s.¹⁶ The new universal banks aggravated the "too big to fail" ("TBTF") problem and created a near-certainty that government "safety nets" for banks—including deposit insurance and emergency lending facilities provided by central banks—would be extended to cover nonbank affiliates owned by large financial conglomerates. As the safety net widened (at least implicitly) to embrace securities and insurance affiliates of universal banks, it also increased the likelihood that a systemic financial crisis would spur governmental authorities to help other major

during the stock market crash of 1987, while "securities markets helped alleviate the credit crunch [in 1990–91] because they were unaffected by the banking crisis" of the early 1990s). See also Arthur E. Wilmarth, Jr., *The Transformation of the U.S. Financial Services Industry, 1975-2000: Competition, Consolidation, and Increased Risks*, 2002 U. ILL. L. REV. 215, 441 (discussing the same contagion benefits created by Glass-Steagall's separation of the banking and securities industries).

11. Peter Eavis, *Senators Introduce Bill to Separate Trading Activities From Big Banks*, N.Y. TIMES (July 12, 2013), <http://dealbook.nytimes.com/2013/07/11/senators-introduce-bill-to-separate-trading-activities-from-big-banks/> ("During the era of Glass-Steagall, there were no systemic banking crises like the one that occurred in 2008"). See also Wilmarth, *supra* note 10, at 225–27, 239 (describing the relatively stable, low-risk nature of the banking industry from the mid-1930s to the late 1970s).

12. Wilmarth, *supra* note 10, at 219–21, 230–34, 238–41, 318–20.

13. *Id.* at 219–21, 306–07, 318–20.

14. Wilmarth, *Dark Side*, *supra* note 7, at 972–80.

15. *Id.* at 975–81, 994–97, 1012–13, 1017–20; Arthur E. Wilmarth, Jr., *The Dodd-Frank Act: A Flawed and Inadequate Response to the Too-Big-to-Fail Problem*, 89 OR. L. REV. 951, 966, 98485 (2011) [hereinafter Wilmarth, *Dodd-Frank and TBTF*].

16. Wilmarth, *Dark Side*, *supra* note 7, at 974–97; Wilmarth, *Universal Banks and the 1920s*, *supra* note 7, at 569–78.

firms in the securities and insurance sectors.¹⁷

The new universal banks and their competitors in the capital markets—particularly the five largest U.S. securities firms and the biggest U.S. insurer (AIG)—created a wide array of innovative financial instruments, including subprime mortgage-backed securities (“MBS”), cash flow and synthetic collateralized debt obligations (“CDOs”) and credit default swaps (“CDS”).¹⁸ With the cooperation of credit ratings agencies (which were paid handsomely for their services), financial conglomerates used those financial instruments to transform trillions of dollars of risky debt into AAA-rated securities that were sold to yield-hungry investors around the world. The resulting surge of high-risk debt generated a massive and unsustainable credit boom in the United States, United Kingdom and European Union.¹⁹ During the 1920s, universal banks triggered a similar credit boom, in part by using comparable methods of packaging risky debt into seemingly “safe” securities that were distributed to investors on both sides of the Atlantic.²⁰

Eighteen large financial conglomerates from the United States, United Kingdom, and European Union were responsible for the lion’s share of the structured-finance securities and related derivatives that were outstanding at the height of the credit boom in 2007.²¹ The same conglomerates became the “epicenter” of the worldwide financial crisis that occurred when the credit bubble burst in 2007 and 2008.²² Only one member of the “big eighteen” failed outright (Lehman Brothers), but governmental authorities in the United States, United Kingdom and European Union “provided extensive assistance to ensure the survival of at least twelve other members

17. Wilmarth, *supra* note 10, at 446–76 (predicting in 2002 that regulators would expand the federal safety net to cover securities and insurance affiliates of universal banks, thereby making the federal government the de facto guarantor of large sectors of the capital markets); Wilmarth, *Dark Side*, *supra* note 7, at 1049–50 (observing in 2009 that events during the global financial crisis “confirmed” my 2002 predictions).

18. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 963–67; Wilmarth, *Dark Side*, *supra* note 7, at 984–96, 1020–43.

19. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 963–71; Wilmarth, *Dark Side*, *supra* note 7, at 1002–20, 1043–46.

20. Wilmarth, *Universal Banks and the 1920s*, *supra* note 7, at 569–85, 612–13.

21. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 966 & n.45 (listing eighteen global financial conglomerates—including the four largest U.S. banks, the five largest U.S. securities firms, the largest U.S. insurer (AIG), and eight universal banks from the United Kingdom and European Union—that dominated global markets for securities and derivatives during the credit boom that peaked in 2007).

22. *Id.* at 978 (noting that the “big eighteen” financial conglomerates “accounted for three-fifths of the \$1.5 trillion of total worldwide losses recorded by banks, securities firms, and insurers between . . . mid-2007 and the spring of 2010”).

of the group.”²³

II. RING-FENCING AS A POTENTIAL REMEDY FOR THE SYSTEMIC RISK CREATED BY UNIVERSAL BANKS

As I explained in a 2014 case study of Citigroup, “the universal banking model is deeply flawed by its excessive organizational complexity, its vulnerability to culture clashes and conflicts of interest, and its tendency to permit excessive risk-taking within far-flung, semi-autonomous units that lack adequate oversight from either senior management or regulatory agencies.”²⁴ The global financial crisis has also shown that large universal banks receive enormous government subsidies due to their TBTF status, and those subsidies “create significant economic distortions and promote moral hazard.”²⁵ Regulators on both sides of the Atlantic have agreed that reforms to remove TBTF subsidies and reduce the systemic risk of financial conglomerates are urgently needed and must be given top priority.²⁶

Professor Schwarcz points out that ring-fencing has emerged as a prominent strategy for restraining systemic risk after the financial crisis.²⁷ The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) contains two provisions—the Volcker Rule (Section 619) and the Lincoln Amendment (Section 726)—that seek to establish at least a partial separation between banks and the risks of securities and derivatives activities.²⁸ The Volcker Rule prohibits banks from engaging in “proprietary trading” (that is, buying and selling securities, derivatives, and

23. *Id.* at 979.

24. Arthur E. Wilmarth, Jr., *Citigroup: A Case Study in Managerial and Regulatory Failures*, 47 IND. L. REV. 69, 136 (2014).

25. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 981–982–85. See also Arthur E. Wilmarth, Jr., *Turning a Blind Eye: Why Washington Keeps Giving in to Wall Street*, 81 U. CIN. L. REV. 1283, 1313–14 (2013) [hereinafter Wilmarth, *Blind Eye*] (citing additional studies confirming the existence of TBTF subsidies for large banks). For a recent analysis of TBTF subsidies exploited by megabanks in the United States, United Kingdom and European Union, see INT’L MONETARY FUND, GLOBAL FINANCIAL STABILITY REPORT: MOVING FROM LIQUIDITY TO GROWTH-DRIVEN MARKETS 101–30 (2014), available at <http://www.imf.org/external/pubs/ft/gfsr/2014/01/pdf/text.pdf>.

26. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 980–81 (quoting speeches by former Federal Reserve Board chairman Ben Bernanke and Bank of England Governor Mervyn King); Huw Jones, *Update 1—IMF’s Lagarde Says Bank Reforms Slowed by Fierce Industry Pushback*, REUTERS (May 27, 2014), <http://uk.reuters.com/article/2014/05/27/imf-lagarde-regulations-idUKL6N0OD1XA20140527> (quoting remarks by International Monetary Fund Managing Director Christine Lagarde and Bank of England Governor Mark Carney emphasizing the need to complete reforms that would effectively address the problems created by TBTF banks).

27. Schwarcz, *supra* note 1, at 78–81, 101–05.

28. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 1025–34 (describing the Volcker Rule and the Lincoln Amendment).

other tradable assets for their own account) and limits the ability of banks to sponsor or invest in hedge funds and private equity funds.²⁹ The Lincoln Amendment generally precludes the Federal Deposit Insurance Corporation (“FDIC”) and the Federal Reserve System (“Fed”) from providing direct financial assistance to firms that deal in swaps and other over-the-counter derivatives.³⁰ The purpose of the Lincoln Amendment is to force banks to transfer their derivatives trading operations to separate nonbank affiliates.³¹

Unfortunately, due to vigorous lobbying by the financial industry during Congress’s consideration of Dodd-Frank, the Volcker Rule and the Lincoln Amendment are “riddled with loopholes and have long phase-in periods.”³² As a result of additional lobbying after Dodd-Frank’s passage, (1) final regulations to implement the Volcker Rule were not issued until December 2013, and the effectiveness of those regulations remains a matter of serious doubt,³³ and (2) bank regulators have extended the Lincoln Amendment’s compliance deadline for an additional two years, until July 2015, and the financial industry is pushing to repeal the provision before it takes effect.³⁴ Thus, Dodd-Frank’s attempts at partial ring-fencing are highly porous and are not likely to have a significant impact on risk-taking by universal banks.³⁵

29. *Id.* at 1025–28.

30. *Id.* at 1030–31.

31. *Id.* See also *id.* at 1044–45 (discussing the exploitation of federal safety net subsidies by bank dealers in derivatives).

32. *Id.* at 1024. See also *id.* at 1028–29 (describing major exceptions to the Volcker Rule, including the ability of banks to engage in “market making” and “risk-mitigating hedging”); *id.* at 1032–33 (describing similar exceptions in the Lincoln Amendment, which allow banks to engage in “[h]edging and other similar risk-mitigating activities” and to trade certain categories of swaps).

33. See Kimberly D. Krawiec, *Don’t “Screw Joe the Plumber”: The Sausage-Making of Financial Reform*, 55 ARIZ. L. REV. 53 *passim* (2013) (describing the financial industry’s lobbying campaign against the implementation of the Volcker Rule); Wilmarth, *Blind Eye*, *supra* note 25, at 1302–04, 1367–68 (same); Donna Borak, *Cheat Sheet: Regulators Release Specifics on the Final Volcker Rule*, AM. BANKER, Dec. 11, 2013, 2013 WLNR 30916756 (describing major exemptions contained in the final regulations implementing the Volcker Rule); Donna Borak, *Banks, Lawyers Struggling to Evaluate Final Volcker Rule*, AM. BANKER, Dec. 12, 2013, 2013 WLNR 31040668 (reporting that the final Volcker Rule regulations “were careful to avoid drawing bright lines and setting explicit limits, introducing numerous gray areas with ample room for judgment” about the scope of various exemptions).

34. Silla Brush, *Fed Grants Foreign Banks Leeway in Dodd-Frank Swap Rule*, BLOOMBERG (June 5, 2013), <http://www.bloomberg.com/news/2013-06-05/fed-grants-foreign-banks-leeway-in-dodd-frank-swap-pushout.html> (reporting that the Federal Reserve and the Comptroller of the Currency granted domestic and foreign banks an additional two-year exemption, until July 2015, to come into compliance with the Lincoln Amendment); Charlene Carter & Kate Ackley, *Second House Panel Backs Repeal of Swaps Provision from Dodd-Frank*, CQ WEEKLY, May 13, 2013, at 846, 2013 WLNR 12271124 (“Large Wall Street banks are pushing for [the repeal of Section 716] as a high priority.”).

35. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 1023–24, 1028–35.

The United Kingdom and European Union have considered more stringent ring-fencing proposals. In December 2013, the UK Parliament enacted legislation based on ring-fencing proposals contained in the Vickers Report. The new legislation authorizes regulators to separate “retail” activities of large UK banks—including deposit-taking and lending to consumers and small business firms—from their capital markets activities.³⁶ However, the UK legislation will not take effect until 2019, and the financial industry has vigorously lobbied UK regulators to adopt implementing regulations that would punch many loopholes in the Vickers ring-fence.³⁷

In the European Union, the Liikanen Report proposed that large banks should transfer high-risk trading and other capital markets activities into ring-fenced affiliates.³⁸ After heavy lobbying by large European banks, Michael Barnier, the EU commissioner for financial services, issued a legislative blueprint that is significantly weaker than the original Liikanen proposal.³⁹ Even with Barnier’s concessions, it is unlikely that the European Parliament will enact Barnier’s plan in the near future.⁴⁰

III. THE CASE FOR NARROW BANKING

As shown above, the United States, United Kingdom, and European Union have considered various ring-fencing proposals, but none of them has yet mandated structural firewalls that would be comparable to a rigorous “narrow banking” plan. As I have previously shown, a strict form of narrow banking could (1) stop financial conglomerates from using the federal safety net to subsidize their speculative capital markets activities and (2) make it more feasible for regulators to separate deposit-taking

36. Schwarcz, *supra* note 1, at 78–79; 101–05 (describing the Vickers Report’s proposals); Jill Treanor, *Andrew Tyrie on Banking Reform ‘If We Get it Right the Industry Will be Stronger’*, *GUARDIAN* (Dec. 29, 2013), <http://www.theguardian.com/business/2013/dec/29/andrew-tyrie-banking-reform-industry-stronger> (discussing Parliament’s enactment of the “ringfence” proposed by the Vickers Report).

37. Sam Fleming, Sharlene Goff & Martin Arnold, *Banks Horse-trade on Ringfence Fine Print*, *FIN. TIMES* (Aug. 14, 2014), <http://www.ft.com/intl/cms/s/0/dfd4da64-23b2-11e4-8e29-00144feabdc0.html#axzz3InQ2KXJ>.

38. Schwarcz, *supra* note 1, at 81; Jim Brunsten, *EU Weighs Bank-Structure Overhaul in Wake of Liikanen Plan*, *BLOOMBERG* (May 17, 2013), <http://www.bloomberg.com/news/2013-05-17/eu-weighs-bank-structure-overhaul-in-wake-of-liikanen-plan-1-.html>.

39. Alex Barker & Sam Fleming, *EU Bank Overhaul Pleases Few in Search for Middle Way*, *FIN. TIMES* (Jan. 29, 2014), <http://www.ft.com/intl/cms/s/0/3cb5bd5c-8903-11e3-bb5f-00144feab7de.html#axzz3GvgsCoQp>.

40. *Id.*; Jim Brunsten & Eshe Nelson, *Bank-Structure Plan Dealt Blow as EU Lawmaker Says No Time*, *BLOOMBERG* (Oct. 28, 2013), <http://www.bloomberg.com/news/2013-10-28/bank-structure-overhaul-dealt-blow-as-eu-lawmaker-says-no-time.html>.

banks from their nonbank affiliates when conglomerates fail.⁴¹ Narrow banking would also provide a common trans-Atlantic basis for regulating and resolving systemically important financial institutions (“SIFIs”) if the United States, United Kingdom, and European Union jointly agreed to adopt a stringent version of the principles underlying the Vickers and Liikanen Reports.

Narrow banking would require deposit-taking banks owned by financial conglomerates to limit their assets to cash and marketable, short-term debt obligations, such as government securities, commercial paper, and other money market instruments eligible for investment by money market mutual funds. Narrow banks could not accept uninsured deposits or issue other uninsured liabilities. A narrow bank would present a very limited risk to the FDIC, because its non-cash assets would consist solely of short-term, marketable obligations that could readily be converted into cash if the FDIC needed to liquidate the bank and pay off its insured depositors.⁴²

Narrow banks would be absolutely prohibited from making any extensions of credit or other transfers of funds to their nonbank affiliates, except for the payment of lawful dividends to their parent holding companies. The absolute prohibition on affiliate transactions would prevent conglomerate-owned banks from transferring their safety net subsidies to their nonbank affiliates, including those engaged in capital markets operations.⁴³ Barring affiliate transactions would also make it easier for regulators to separate SIFI-owned banks from their parent holding companies and other nonbank affiliates, thereby advancing Dodd-Frank’s provisions requiring SIFIs to develop feasible resolution plans (“living wills”).⁴⁴ In addition, narrow banks would be forbidden from purchasing derivatives except as end-users in bona fide hedging transactions under the strict rules of Financial Accounting Standard Statement No. 133.⁴⁵

My narrow banking plan would also bar the FDIC from rescuing creditors of affiliates of narrow banks. Accordingly, I have proposed that Congress should repeal the “systemic risk exception” (“SRE”) currently

41. The following discussion is adapted from my narrow banking proposal presented in Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 1034–52.

42. *Id.* at 1038.

43. *Id.* at 1041–42.

44. *Id.* at 1050.

45. *Id.* at 1043–44 (noting that such a prohibition “would accomplish an essential goal of the Volcker Rule and the Lincoln Amendment”). *See also id.* at 1036 (discussing Financial Accounting Standard Statement No. 133).

embodied in the Federal Deposit Insurance Act.⁴⁶ A repeal of the SRE would preclude the use of deposit insurance funds “to support a bailout of uninsured creditors of a failed or failing SIFI.”⁴⁷

To further reduce subsidies for SIFIs, my plan would require SIFIs to pay risk-based premiums to prefund the Orderly Liquidation Fund (“OLF”), which provides financing for the liquidation of failed SIFIs under Dodd-Frank’s Orderly Liquidation Authority (“OLA”).⁴⁸ As a result of Wall Street’s highly effective lobbying, Dodd-Frank does not provide a prefunding mechanism for the OLF, and the FDIC is therefore required to rely on bridge loans from the Treasury Department (that is, the taxpayers) in order to finance liquidations of SIFIs.⁴⁹ By requiring SIFIs to prefund the OLF, my plan would compel SIFIs to “internalize more of the ‘negative externality’ (i.e., the potential public bailout cost) of their activities.”⁵⁰

My narrow banking plan is designed to restore market discipline by forcing financial conglomerates to demonstrate that “they can produce superior risk-related returns to investors *without* relying on explicit and implicit government subsidies.”⁵¹ Universal banks have failed to generate consistently positive returns, even with the federal subsidies they currently exploit.⁵² Financial conglomerates should be subjected to “the same type of [market] scrutiny and discipline” that forced the breakup of many commercial and industrial conglomerates.⁵³ If the current subsidies for SIFIs were removed, I believe many of them would be compelled to break up voluntarily.

Policymakers and analysts have debated whether narrow banking would go far enough to control the risks of universal banks. Some argue that only a reinstatement of Glass-Steagall’s absolute barriers between commercial banking and the capital markets would be adequate to prevent

46. *Id.* at 1001, 1022–23 (explaining that the SRE could be used, in the context of failed bank receiverships, “to protect the creditors of SIFI-owned banks (including, potentially, the parent companies of such banks)”).

47. *Id.* at 1042–43.

48. *Id.* at 1049–50. *See also id.* at 996–99, 1015 (describing the OLF and OLA).

49. *Id.* at 1015–19.

50. *Id.* at 1021–22 (noting also that a prefunded OLF would “shield governments and taxpayers from at least ‘first-loss’ exposure for the cost of resolving future failures of SIFIs”).

51. *Id.* at 1046 (emphasis added).

52. *Id.* at 1046–47. *See also* Wilmarth, *supra* note 24, at 110–14 (discussing the heavy losses suffered by Citigroup’s shareholders since 2007).

53. Wilmarth, *Dodd-Frank and TBTF*, *supra* note 15, at 1047 (“[M]any of the largest commercial and industrial conglomerates in the United States and Europe were broken up through hostile takeovers and voluntary divestitures during the past three decades.”).

a recurrence of the recent financial crisis.⁵⁴ Others contend that narrow banking would be a sufficient and more politically feasible approach, because it would remove public subsidies from large banking companies without forcing them to divest all of their capital markets activities.⁵⁵

In view of the long odds against any re-enactment of Glass-Steagall,⁵⁶ narrow banking appears to be a promising and more likely alternative. Narrow banking would highlight the importance of removing current market-distorting public subsidies for universal banks. In addition, it would not compel a particular structural outcome but instead would enable financial markets to discipline universal banks in a manner similar to industrial and commercial conglomerates. Properly understood, the case for narrow banking would compel defenders of the status quo to argue for the continuation of public subsidies for SIFIs and against the unfettered operation of market discipline within the financial system. That is an argument proponents of financial reform should win.

54. E.g., Eavis, *supra* note 11 (reporting on the proposed “21st Century Glass-Steagall Act” introduced in 2013 by Senators Maria Cantwell, Angus King, John McCain, and Elizabeth Warren); Liam Halligan, *Only Full Separation Will Make Our Big Banks Safe*, TELEGRAPH (May 10, 2014), <http://www.telegraph.co.uk/finance/comment/10822521/Only-full-separation-will-make-our-big-banks-safe.html>.

55. E.g., Jill Treanor, *Architect of Ringfencing Says it Will Avert Need to Split Banks*, GUARDIAN (Nov. 12, 2012), <http://www.theguardian.com/money/2012/nov/12/architect-ringfencing-avert-need-split-banks> (quoting testimony of John Vickers before a committee of the UK Parliament).

56. Eavis, *supra* note 11 (describing the formidable political obstacles confronting those who support a new Glass-Steagall Act).